



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[170207157-7157-01]

RIN 0694-AH31

Revisions, Clarifications, and Technical Corrections to the Export Administration Regulations; Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; correcting amendments.

SUMMARY: In this final rule, the Bureau of Industry and Security corrects an error in the text of Export Control Classification Numbers (ECCNs) 0D606, 0E606, and 8A609.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Overview

On December 27, 2017, BIS published a final rule, Revisions, Clarifications, and Technical Corrections to the Export Administration Regulations (82 FR 61153)(the December 27 rule), which made corrections to certain provisions of the Export Administration Regulations (EAR), including the Commerce Control List (part 774 of the EAR)(CCL). The corrections were editorial in nature and did not affect license requirements. In this final rule, BIS is amending ECCNs 0D606 and 0E606 by reinstating original text that was erroneously replaced with the text for ECCNs 0D614 and 0E614, respectively, in the December 27 rule. In addition, this rule reinstates paragraph (2) of the Special Conditions for STA in ECCN 8A609.

Part 774

ECCNs 0D606 and 0E606: The December 27 rule amended ECCN subparagraphs 0D606.a and 0E606.a to include references to ECCNs 0B606 and 0C606. During drafting, the License Requirements section and the text following the revised subparagraphs for both ECCNs was exchanged with the text for ECCNs 0D614 and 0E614, respectively. In order to follow the guidelines of the original preamble, this correction to the December 27 rule restores the original License Requirements section and the text of ECCNs 0D606 and 0E606 following subparagraph .a in both ECCNs. In addition, this rule replaces the incorrect reference to 0D606 with 0E606 in the Special Conditions for STA of ECCN 0E606.

ECCN 8A609: The December 27 rule amended ECCN 8A609 by revising the title reference in these ECCNs to match the current title of §740.20(g) and in doing so inadvertently removed

paragraph (2) of the Special Conditions for STA. This rule restores paragraph (2) of the Special Conditions for STA in ECCN 8A609.

Export Administration Act

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 15, 2017, 82 FR 39005 (August 16, 2017) has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule does not impose any regulatory burden on the public and is consistent with the goals of Executive Order 13563. This rule has been designated not

significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

2. This final rule does not contain information collections subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA). Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The Department of Commerce finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act otherwise requiring prior notice and the opportunity for public comment because they are unnecessary. The revisions made by this rule are administrative in nature and do not affect the privileges and obligations of the public. Additionally, it is important that the edits and clarifications are added as soon as possible to prevent improper interpretation of the EAR. The Department also finds that there is good cause under 5 U.S.C. 553(b)(A) to waive the provisions of the Administrative Procedure Act requiring notice and comment because these changes are limited to providing guidance on existing interpretations of current EAR provisions. Because these revisions are not substantive changes to the EAR, the 30-day delay in effectiveness otherwise required by 5 U.S.C. 553(d) is not applicable. No other law requires that a notice of proposed rulemaking and opportunity for public comment be given for this rule. The analytical requirements of the Regulatory Flexibility

Act (5 U.S.C. 601 *et. seq.*) are not applicable because no general notice of proposed rulemaking was required for this rule by 5 U.S.C. 553, or by any other law. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, part 774 of the Export Administration Regulations (15 CFR part 774) is amended as follows:

Part 774 - [AMENDED]

1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. 4601 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 et seq.; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

2. In supplement No. 1 to part 774, Category 0, ECCN 0D606 is revised to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

0D606 “Software” “specially designed” for the “development,” “production,” operation, or maintenance of ground vehicles and related commodities controlled by 0A606, 0B606, or 0C606 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country Chart (See Supp. No. 1 to part 738)
NS applies to entire entry, except 0D606.y	NS Column 1
RS applies to entire entry, except 0D606.y	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry, except 0D606.y	See § 746.1(b) for UN controls

List Based License Exceptions (See Part 740 for a description of all license exceptions)

CIV: N/A

TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any software in 0D606.

List of Items Controlled

Related Controls: (1) Software directly related to articles enumerated or otherwise described in USML Category VII are subject to the controls of USML paragraph VII(h). (2) See ECCN 0A919 for foreign made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content.

Related Definitions: N/A

Items:

a. “Software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by ECCNs 0A606 (except for ECCNs 0A606.b or 0A606.y), 0B606, or 0C606.

b. through x. [RESERVED]

y. “Specific software” “specially designed” for the “production,” “development,” operation, or maintenance of commodities described in ECCN 0A606.y.

3. In supplement No. 1 to part 774, Category 0, ECCN 0E606 is revised to read as follows:

0E606 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of ground vehicles and related commodities in 0A606, 0B606, 0C606, or software in 0D606 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

<i>Control(s)</i>	<i>Country Chart (See Supp. No. 1 to part 738)</i>
NS applies to entire entry, except 0E606.y	NS Column 1
RS applies to entire entry, except 0D606.y	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry, except 0D606.y	See § 746.1(b) for UN controls

List Based License Exceptions (See Part 740 for a description of all license exceptions)

CIV: N/A

TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any technology in 0E606.

List of Items Controlled

Related Controls: Technical data directly related to articles enumerated in USML Category VII are subject to the controls of USML paragraph VII(h).

Related Definitions: N/A

Items:

a. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities enumerated or otherwise described in ECCN 0A606 (except for ECCNs 0A606.b or 0A606.y), 0B606, or 0C606.

b. through x. [RESERVED]

y. Specific “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul or refurbishing of commodities or software in ECCN 0A606.y or 0D606.y.

4. In supplement No. 1 to part 774, Category 8, ECCN 8A609 is revised to read as follows:

8A609 Surface vessels of war and related commodities (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country Chart (See Supp. No. 1 to part 738)
NS applies to entire entry, except 8A609.y	NS Column 1
RS applies to entire entry, except 8A609.y	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry, except 8A609.y	See § 746.1(b) for UN controls

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: \$1500

GBS: N/A

CIV: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§740.20(c)(1) of the EAR) may not be used for any item in 8A609.a, unless determined by BIS to be eligible for License Exception STA in accordance with §740.20(g) (License Exception STA eligibility requests for 9x515 and “600 series” items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 8A609.

List of Items Controlled

Related Controls: (1) Surface vessels of war and special naval equipment, and technical data (including software), and services directly related thereto, described in 22 CFR part 121, Category VI, Surface Vessels of War and Special Naval Equipment, are subject to the jurisdiction of the International Traffic in Arms Regulations. (2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.- origin “600 series” controlled content. (3) For controls on diesel engines and electric motors that are “subject to the EAR” for surface vessels of war “subject to the EAR” or “subject to the ITAR,” see ECCN 8A992.g. For diesel engines and electric motors for surface vessels of war “subject to the ITAR,” see 22 CFR part 121, Category VI(c) for parts, components, accessories, and attachments, “specially designed” for developmental vessels funded by the Department of Defense via contract or other funding authorization. (4) For controls on military gas turbine engines and related items for vessels of war, see ECCN 9A619.

Related Definitions: N/A

Items:

a. Surface vessels of war “specially designed” for a military use and not enumerated or otherwise described in the USML.

Note 1: 8A609.a includes: (i) Underway replenishment ships; (ii) surface vessel and submarine tender and repair ships, except vessels that are “specially designed” to support naval nuclear propulsion plants; (iii) non-submersible submarine rescue ships; (iv) other auxiliaries (e.g., AGDS, AGF, AGM, AGOR, AGOS, AH, AP, ARL, AVB, AVM, and AVT); (v) amphibious warfare craft, except those that are armed; and (vi) unarmored and unarmed coastal, patrol,

roadstead, and Coast Guard and other patrol craft with mounts or hard points for firearms of .50 caliber or less.

***Note 2:** For purposes of paragraph .a, surface vessels of war includes vessels “specially designed” for military use that are not identified in paragraph (a) of ITAR § 121.15, including any demilitarized vessels, regardless of origin or designation, manufactured prior to 1950 and that have not been modified since 1949. For purposes of this note, the term modified does not include incorporation of safety features required by law, cosmetic changes (e.g., different paint), or the addition of “parts” or “components” available prior to 1950.*

b. Non-magnetic diesel engines with a power output of 50 hp or more and either of the following:

b.1. Non-magnetic content exceeding 25% of total weight; or

b.2. Non-magnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines.

c. through w. [RESERVED]

x. “Parts,” “components,” “accessories” and “attachments” that are “specially designed” for a commodity enumerated or otherwise described in ECCN 8A609 (except for 8A609.y) or a defense article enumerated or otherwise described in USML Category VI and not specified elsewhere on the USML, in 8A609.y or 3A611.y.

***Note 1:** Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 8A609.x are controlled by ECCN 8A609.x.*

***Note 2:** “Parts,” “components,” “accessories” and “attachments” specified in USML subcategory VI(f) are subject to the controls of that paragraph. “Parts,” “components,” “accessories,” and “attachments” specified in ECCN 8A609.y are subject to the controls of that paragraph.*

y. Specific “parts,” “components,” “accessories” and “attachments” “specially designed” for a commodity subject to control in this ECCN or for a defense article in USML Category VI and not elsewhere specified in the USML, as follows, and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor:

- y.1. Public address (PA) systems;
- y.2. Filters and filter assemblies, hoses, lines, fittings, couplings, and brackets for pneumatic, hydraulic, oil and fuel systems;
- y.3. Galleys;
- y.4. Lavatories;
- y.5. Magnetic compass, magnetic azimuth detector;
- y.6. Medical facilities;
- y.7. Potable water tanks, filters, valves, hoses, lines, fittings, couplings, and brackets;
- y.8. Panel knobs, indicators, switches, buttons, and dials whether unfiltered or filtered for use with night vision imaging systems;
- y.9. Emergency lighting;
- y.10. Gauges and indicators;
- y.11. Audio selector panels.

Dated: January 2, 2018.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

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